DEPARTMENT OF CORPORATIONS.

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GRAVELY *v.* SOUTHERN ICE MACHINE CO.[1] SUPREME COURT OF LOUISIANA. FEBRUARY 11, 1895.

Foreign Corporation—Service of Process.

Any service which would be sufficient as against a domestic corporation may be authorized by the statute of a state to commence an action against a foreign or non-resident corporation. It may, arcordingly, be made upon the president of a foreign corporation during the time he may be temporarily abiding within the jurisdiction of the court where the suit is brought.

A judgment to be rendered in an action thus commenced against a foreign corporation will be valid, and can be enforced against any property at any time found within the state.—(Syllabus by the court.)

SERVICE OF PROCESS UPON A FOREIGN CORPORATION.

It is not surprising that in dealing with "an artificial being, invisible, intangible, and existing only in contemplation of law," questions and problems more or less troublesome should arise. It is true enough when it is sought to determine the status of a corporation and its powers within the jurisdiction which created it, but when territorial lines are passed, and the rights and liabilities of a corporation in a foreign jurisdiction become involved, the "invisible, intangible" character of the "artificial being" becomes more pronounced and the questions arising become correspondingly more difficult of solution. And this seems but natural when we are told that a "corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created" (*Paul* v. *Va.*, 8 Wall. 181); but that statement is subject to qualifications to be noted later on.

[1] Reported in 47 La. Ann.

Among the questions which do arise in such cases is that of the liability of a corporation to suit in a foreign jurisdiction, and this question involves the primary one: How may process be served upon such foreign corporation? It was stated by Judge STORRS, in *Middlebrooke* v. *Springfield Fire Insurance Co.*, 14 Conn. 301, that "by the common law there is no process which can be served either upon natural persons not inhabitants of or within the realm, or upon foreign corporations, by which their appearance can be compelled in any court, for the reason that the former are not found within the realm and the latter has no corporate existence within it, nor could either be compelled to appear by an attachment of their property: *Com. Dig.* (attachment), 1 Tidd Pr. 116; 16 Johns. Rep. 5; 16 Pick. 274. If, therefore, they can be brought into court, it must be by virtue of some statutory provisions." (See, also, *Barnett* v. *R. R.*, 4 Hun, 114; *Newell* v. *Ry.*, 19 Mich. 336; *Latimer* v. *Ry.*, 43 Mo. 109.)

In *Pennoyer* v. *Neff*, 95 U. S. 714, it was held that to entitle a personal judgment rendered in a state court against a non-resident, to be received in evidence in the Federal courts, personal service of citation on the party or his voluntary appearance is essential to the jurisdiction of the court, except, possibly, in a proceeding to determine the status of a citizen towards a non-resident, or where a party agrees that service upon another shall be equivalent to service upon himself. According to Mr. Justice FIELD, "the doctrine of that case applies in all its force to personal judgments of state courts against foreign corporations;" the courts rendering them must have acquired jurisdiction over the party by personal service or voluntary appearance, whether the party be a corporation or a natural person. There is only this difference: a corporation being an artificial being, can act only through agents and only through them can be reached, and process must therefore be served upon them. In the state where a corporation is formed it is not difficult to ascertain who are authorized to represent and act for it. Its charter or the statutes of the state will indicate in whose hands the control and management of its affairs are placed. Directors are readily found, as also the officers

appointed by them to manage its business. But the moment the boundary of the state is passed, difficulties arise; it is not so easy to determine who represent the corporation there, and under what circumstances service on them will bind it:" *St. Clair* v. *Cox*, 106 U. S. 353.

Let us see what some of those difficulties are, and how they have been met by the courts.

As pointed out by Justice FIELD (*supra*), the difference between service of process upon a corporation and upon a natural person is that the former, "being an artificial being, can act only through agents and only through them can be reached;" but the authority of an agent is not unlimited, and one who is an agent under certain conditions and for certain purposes is not necessarily an agent under others; hence, while a natural person going into a particular place or jurisdiction, cannot deny his own personal existence there (*Smith* v. *Tuttle*, 5 Biss. 159, *contra*), nevertheless he may, in certain cases, dispute having brought with him the personalities of other beings, which he may have represented and been officially identified with in other localities: See the case of *Bushel* v. *Ins. Co.* (15 S. & R. 173, 1827). In that case, it was said that the president of a bank of one state upon going into another state on business unconnected with the corporation would not represent the corporation there; but the question was left undetermined, where a corporation locates an officer within a state for the express purpose of making contracts there, whether service of process upon him would be sufficient.

This question has, however, arisen and been settled affirmatively in a number of cases decided since that time, and is one which has been the subject of statutory provisions in nearly every state.

In *Lafayette Ins. Co.* v. *French* (18 Howard, 404), the Supreme Court of the United States held that a judgment recovered in Ohio against an Indiana insurance company, service having been made upon a resident agent of the company in Ohio, and the laws of that state providing that such service should be "as effectual as though the same were

served on the principal," is a judgment entitled to the same faith and credit in Indiana as in Ohio.

Mr. Justice CURTIS, in delivering the opinion of the court, said: "This corporation, existing only by virtue of a law of Indiana, cannot be deemed to pass personally beyond the limits of that state: *Bank of Augusta* v. *Earle*, 13 Pet. 519. But it does not necessarily follow that a valid judgment could be recovered against it only in that state. The inquiry is not whether the defendant was personally within the state, but whether he or some one authorized to act for him in reference to the suit, had notice and appeared; or if he did not appear whether he was bound to appear or suffer a judgment by default. A corporation created by Indiana can transact business in Ohio only with the consent express or implied of the latter state: 13 Pet. 519. This consent may be accompanied by such conditions as Ohio may think fit to impose; and those conditions must be deemed valid and effectual by other states and by this court, provided they are not repugnant to the constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence. In this instance, one of the conditions imposed by Ohio was in effect that the agent who should reside in Ohio and enter into contracts of insurance there in behalf of the foreign corporation, should also be deemed its agent to receive service of process in suits founded on such contracts. We find nothing in this provision, either unreasonable in itself or in conflict with any principle of public law."

The decision, in this case, however, was expressly limited to the case of a corporation acting in a state foreign to its creation, under a law of that state which recognized its existence for the purpose of making contracts there and being sued on them through notice to its contracting agents.

In *St. Clair* v. *Cox* (106 U. S. 350), the court in passing upon a Michigan statute, providing in suits commenced by attachment against a foreign corporation, that service may be

made upon "any officer, member, clerk or agent of such corporation within this state," said: we do not, however, understand the laws as authorizing the service of a copy of the writ as a summons upon the agent of a foreign corporation, unless the corporation be engaged in business in the state and the agent be appointed to act there. We so construe the words "agent of such corporation within the state." They do not sanction service upon the officer or agent of the corporation who resides in another state, and is only casually in the state, and not charged with any business of the corporation there." In concluding the opinion, the court used this language: "Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member for instance of the foreign corporation, that is a mere stock stockholder—is not a departure from the principle of natural justice mentioned in *Lafayette Ins. Co.* v. *French*, which forbids condemnation without citation, it is sufficient to observe that we are of opinion that when service is made within the state upon an agent of a foreign corporation, it is essential in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record either in the application for the writ or accompanying its service, or in the pleadings or in the findings of the court—that the corporation was engaged in business in the state. The transaction of business by the corporation in the state, general or special appearing, a certificate of service by the proper officer on a person who is its agent there, would in our opinion be sufficient *prima facie* evidence that the agent represented the company in the business. It would then be open when the record is offered in evidence in another state to show that the agent stood in no representative character to the company, that his duties were limited to those of a subordinate employee or to a particular transaction, or that his agency had ceased when the matter in suit arose."

The doctrine of these cases has been recognized and applied in later decisions of the same court, the most recent of which is *Goldey* v. *Morning News* (156 U. S. 518-1895); in that

case it was held that in a personal action against a corporation, neither incorporated nor engaged in business in the state, nor having an agency or property therein, service upon its president temporarily within the jurisdiction is not sufficient service upon the corporation. In considering the principles underlying the question, Mr. Justice GRAY says: "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction, or upon some one authorized to accept service in his behalf, or by his waiver by general appearance or otherwise of the want of due service. A judgment rendered in a court of one state against a corporation neither incorporated nor doing business within the state, must be regarded as of no validity in the courts of another state or of the United States, unless service of process was made in the first state upon an agent appointed to act there for the corporation; and not merely upon an officer or agent residing in another state and only casually within the state and not charged with any business of the corporation there:" *Lafayette Ins. Co.* v. *French*, 18 How. 404; *St. Clair* v. *Cox*, 106 U.S. 350; *Fitzgerald Co.* v. *Fitzgerald*, 137 Id. 98; *Mexican Central Rwy.* v. *Pinkney*, 149 Id. 94; *In re Hohorst*, 150 Id. 653. The doctrine of the Supreme Court therefore seems to be that in order to sustain service upon an agent of a foreign corporation, it must appear that at the time and place of service he was an agent in fact, charged with the business of the corporation there. In two of the states statutes have been so construed as to sanction service upon an agent of a foreign corporation, even though at the time he be merely upon a pleasure trip, or engaged solely upon his own private business and not upon any business of the corporation.

In passing upon a Michigan statute, the Supreme Court of that state said: "We cannot hold under the statute above referred to that the officer or agent of the corporation within the state must be here upon official business for his corporation or specially authorized by it to receive service. To do this would be to allow the individual upon whom the service

is made to determine in most cases for himself without fear of successful contradiction whether at the particular moment of such service he was acting as such officer or agent or as a private person. It would have a tendency to thwart the special purpose and object of the statute, and such we do not think was the intent of the legislature. The officer or agent must be presumed and held as such for the purposes of service under the statute, and cannot throw off his representative capacity at will in order to defeat its manifest object:" (*Iron Co.* v. *Construction Co.*, 61 Mich. 226.) It may be noted that a statute of the same state was before the court in *St. Clair* v. *Cox*, *supra*, and see *U. S. Graphite Co.* v. *Pacific Graphite Co.*, 68 Fed. 442.

In *Pope* v. *Terre Haute Co.* (87 N. Y. 137), it was held that where service was made upon the president of a foreign corporation while he was temporarily within the state for purposes of his own on his way to a seaside resort, the same was valid notwithstanding the corporation transacted no business nor had any place of business or property within the state. The court justified the decision by holding that "the object of all service of process for the commencement of a suit or any other legal proceeding, is to give notice to the party proceeded against, and any service which reasonably accomplishes that end answers the requirements of natural justice and fundamental law (*Gibbs* v. *Queen Ins. Co.*, 63 N. Y. 114), and what service shall be deemed sufficient for that purpose is to be determined by the legislative power of the country in which the proceeding is instituted, subject only to the limitation that the service must be such as may reasonably be expected to give the notice aimed at." (See, also, *Hiller* v. *R. R.*, 70 N. Y. 223.)

If this be sound doctrine there would seem to be no reason why a legislature should not provide that service could be made in such cases by registered letter directed to an officer either within or without a state; such a mode might "reasonably be expected to give the notice aimed at." But, however much such a law may be recognized and enforced in the state where it originates, it is unlikely to be approved in other juris-

dictions and tribunals, for it certainly seems to be "inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural law which forbids condemnation without opportunity for defence."

In *Moulin* v. *Ins. Co.*, 4 Zab. (N. J.) 222, the court, in speaking of the law referred to, said: "But I am quite prepared to say that when a corporation confines its business operations to the state which chartered it, a law of another state which sanctions the service of process upon one of its officers or members accidentally within its jurisdiction, is unreasonable and so contrary to natural justice and to the principles of international law, that the courts of other states ought not to sanction it. In such a case a president or other officer ought not to be considered as carrying his official character along with him." In that case it was held that a judgment obtained in New York in such a manner was not binding in New Jersey.

The attitude of the Supreme Court of Pennsylvania upon the question is expressed thus by Chief Justice PAXSON in *Phillips* v. *Library Co.* (141 Pa. 462): "We do not understand that the act of 1849 or any of the cases cited countenance the doctrine that if the president of a New Jersey corporation which transacted no business in this state, crosses the Delaware river to dine with a friend on this side, he thereby carries the corporation with him and subjects it to the jurisdiction of the courts of this state as to contracts made or torts committed in New Jersey. Under such circumstances he is not here in his representative capacity. He is not the corporation nor does he bring it here. If the rule were otherwise he would carry the corporation with him upon a trip around the world, and subject it to the jurisdiction of every country he might visit. We will not designate such a proposition as absurd, but it certainly has not a shadow of reason to sustain it."

To these forcible judicial utterances may be added a quotation from the most recent text book authority upon the subject (Alderson on Judicial Writs and Process), which gives

special consideration to the subject, and concludes in part as follows: "It may now be correctly asserted that the presence of a corportion is in the state where it was created and in any other state where it transacts business. This proposition produces the corollary that a corporation cannot be considered present in a state where it was neither incorporated nor does business" (p. 219).

That this is well settled law, the following additional cases may be referred to as authority: *Camden Rolling Mill Co.* v. *Iron Co.*, 32 N. J. L. 15; *R. R.* v. *McDermid*, 91 Ill. 170; *R. R.* v. *Hook*, 40 Ill. App. 547; *Silsbee* v. *Hotel Co.*, 30 Id. 204; *Latimer* v. *Rwy.*, 43 Mo. 105; *Peckham* v. *Haverhill Parish*, 16 Pick. 274; *State* v. *Dist. Ct.*, 26 Minn. 233; *Lathrop* v. *Rwy.*, 1 McArthur 234; *Dallas* v. *Rwy.*, 2 Id. 146; *Schmidlapp* v. *La Confiance Ins. Co.*, 71 Ga. 246; *Newell* v. *Rwy.*, 19 Mich. 336; *Bushel* v. *Comth. Ins. Co.*, 15 S. &. R. 173; *Goldey* v. *Morning News*, 42 Fed. 112; *Reifsnider* v. *Pub. Co.*, 45 Id. 433; *Fidelity Vault Co.* v. *Rwy.*, 53 Id. 800; *American Wooden-ware Co.* v. *Stem*, 63 Id. 676; *St. Clair* v. *Cox*, 106 U. S. 350; *Fitzgerald Co.* v. *Fitzgerald*, 137 Id. 98; *Goldey* v. *Morning News*, 156 Id. 518; see also *Morawetz on Private Corporations*, Sec. 980, Vol. 25, Am. & Eng. Ency. of Law, 132.

It being therefore established that in order to sustain a personal judgment rendered in the court of a state against a foreign corporation, it must appear that the corporation was engaged in business in the state, the next question is to determine what constitutes being "engaged in business in the state?" Having an established agency at which the usual business of the corporation is conducted certainly fulfils the condition; but is it necessary that the business be localized, and more or less permanent and regular in character, or will a single transaction or acts incidental thereto, answer the requirement of the law?

This question, though not a new one, is suggested by the recent decision rendered by the Supreme Court of Louisiana in the case of *Gravely* v. *Southern Ice Machine Co.*, (16 Southern Rep. 866), which has been selected as the subject of this

annotation. The facts of the case as well as the ruling of the court are contained in the following extract from the able opinion delivered by Mr. Justice WATKINS: "The defendant, a foreign corporation, dwelling in the State of Tennessee, sent its recognized agent into the State of Louisiana, endowed with special authority to employ the plaintiff to negotiate with McDonald and Hart, of the city of New Orleans, for sale to them of an ice manufacturing plant; that the plaintiff was thus employed and through his agency a sale of a plant was negotiated with said parties at the price of $110,000, and same was by the detendant after established in said city. Disagreements between these contracting parties arose, a suit followed in the court of this city and state, which is still pending. While within the state of Louisiana, and in this city superintending this work, the president of the corporation was personally cited and served with process in this case, asking enforcement of plaintiff's demand for compensation for commissions under his contract with the company. In this situation, we are of opinion that the District Court thereby acquired full and complete jurisdiction over the defendant corporation *pro hac vice.* The principle to be kept in mind, and on which the jurisdiction of the Federal court is predicated, is the citizenship of the defending corporation; and, unless the character of the business of the corporation conducted in a foreign state be such as to constitute it a citizen of the latter state *pro hac vice*, the Federal jurisdiction is not complete. But in a state court the rule is different; the only question there being one of proper and effective service of process upon an officer legally representing the corporation, whereby it can be brought into court, and subjected to judgment, or of proper notice upon an officer of the corporation to bring the matter in litigation to its attention, and require its action. The rule in such a case is identically the same as that in reference to any domestic corporation; the effect of the judgment to be rendered being confined to its property within the jurisdiction of the courts of the state. Our conclusion is that the service of citation on the president of the defendant corporation, while temporarily abiding here, is a good and effective service, on which a valid

judgment may be founded, which may be enforced against any property of the defendant company *within the state*."

In the course of the opinion the court says: "Under our law a corporation is an intellectual being, who may be sued in our courts as natural persons are," and it is said that a foreign corporation is to be treated as a "foreigner" under the Louisiana Code of Practice, that is to say, "one who has no known place of residence in the state and consequently may be cited wherever it is found," (citing *State* v. *Fruit Co.*, 46 La. Ann. 656). The New York case of *Pope* v. *Manufacturing Co.* (*supra*), which decided that a foreign corporation could be cited by serving its officer, while temporarily within the state, not in any official capacity or on the business of the corporation, is cited and quoted with approval; but the court is careful to say, as was said in the latter case, that "a judgment to be rendered in an action thus commenced against a foreign corporation, will be valid for every purpose within the state, and can be enforced against any property at any time *found within this state*. Its effect elsewhere need not now be determined."

But considering the decision with due regard to the facts before the court, the case decides that "proper and effective service of process upon an officer legally representing the corporation," is all that is necessary in such cases, and that such was secured when service was duly effected upon the president of the foreign corporation, temporarily within the jurisdiction, but, "charged with the business of the corporation" there, to wit, supervising the erection of the ice plant, contracted to be established by the defendant, as well as attending to the corporation's interests, as plaintiff, in the suit then and there pending, and which related to such contract. The decision, therefore, is not open to the criticism that it is in conflict with the line of cases, to which *Goldey* v. *Morning News* (*supra*) is the most recent addition, for the facts clearly show that the officer served was at the time "charged with the business of the corporation" to a certain extent; but, as above suggested, the case seems to invite the inquiry whether the corporation was *engaged in business in the state*,

the requisite mentioned in some of the decisions already referred to.

In addition to the Pope case, the court cites *Hagerman* v. *Empire Slate Co.* (97 Pa.. 534), in which it was held that, though a foreign corporation had failed to establish an office and designate its agent as required by statute, service could, nevertheless, be made upon an agent within the state charged with the company's business there. The facts of the case show that while the agent had not been formally appointed by any regular resolution of the board of directors, he was, however, requested by the president to attend to the affairs of the corporation in Pennsylvania; the defendant was a slate company owning slate quarries in that state, which were leased upon a royalty payable in slate; the agent lived in the neighborhood of the quarries, and had charge of the sale and shipment of slate for the company, the rental of certain parts of the real estate and the payment of taxes; he gave receipts in the company's name as agent and accounted to the company for receipts and disbursements in its behalf. In the language of the court, "thus it appears, in fact, that he acted as an agent of the company. Under all the facts proved we think he was shown to be such an agent as to make the service on him valid." (For a similar ruling, see *Foster* v. *Lumber Co.*, 58 N. W. 9.)

It has been held that the Act of 1849 (Pa.) regulating service in such cases, contemplates only a foreign corporation doing business within the Commonwealth: *Phillips* v. *Library Co.* (*supra*); and in *McConkey* v. *Peach Bottom Slate Co.* (14 C. C. Rep. 514), it was doubted whether a single transaction was sufficient; but in *Klopp* v. *Water Wks. Co.*, 52 N. W. (Neb.), 819, the court seemed to be free from doubt upon the question, as appears from the following language of Chief Justice MAXWELL: "Where a foreign corporation contracts a debt in this state, as for labor and materials, service in this state upon the managing agent is sufficient, though he be but temporarily within the state. Now suppose a foreign corporation comes into this state and purchases goods to be paid for here, must the seller go into another state or, perhaps, a foreign

country to recover for the same? That is true if service cannot be had upon the corporation in the state. Then the seller must bring his action where service can be had. But a person who has authority to contract a debt within this state for a corporation, is so far the managing agent within the state that service may be had upon him for that debt that will bind the corporation. The agent is commissioned to contract the debt and the corporation thereby secures the benefit of his services. It must also take the burden of being liable to an action therefor." In *Galveston City R. R.* v. *Hook* (40 Ills. App. 547), it was held that where the president of a foreign corporation is temporarily in the state upon his own business, there being no agent or place of business within the state, a merely casual offer by him to receive a proposition relating to the business of his company, is not the transaction of business by an agent, as authorizes the conclusion that the company is transacting its business in the state; the court says: "To be found within the state, a foreign corporation must have sent its agent on whom service is made, to the state to conduct its business therein either continuously or for a time, so as to complete a transaction or an enterprise, or, at least, charged with the duty of making a particular contract in the state or negotiating therein for the company."

It may be found of interest to advert at this point to a line of federal decisions bearing upon this question. It will be recalled that in the opinion of the court in the principal case, a distinction was pointed out with regard to the jurisdiction of the federal and state courts; that the former depended upon the "citizenship of the defending corporation." This, however, was not formerly the law, for by the acts of 1789, 1858 and March 3, 1875 (18 Stat. 470), relating to the jurisdiction of the circuit courts, it was provided that no civil suit should be brought "against any person in any other district than that whereof he is an inhabitant, *or in which he shall be found* at the time of serving such process or commencing such proceeding, &c.," the act of August 13, 1888 (25 Stat. 433), has repealed the permission to sue a defendant in a district in which he is *found*, and has peremptorily enacted that "where

the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the *residence of either the plaintiff or defendant*:" See *McCormick* v. *Walthers*, 134 U. S. 41; *Shaw* v. *Quincy Mining Co.*, 145 Id. 444. In the latter case it was held that a foreign corporation engaged in business in one state, was not a *resident* thereof; hence could not be sued there in a federal court by a citizen of a different state. But before the act of 1888 it could have been so sued, the question then being, was it *found* within the district (?) as was the question in the principal case. Let us examine a few of the cases decided under the old law.

In *Hume* v. *R. R.*, 8 Biss. 31 (1877), it was held that the presence of the agent of a foreign corporation engaged in business in the state, was not the presence of the corporation itself, within the meaning of the act, "any more than the presence of the agent of a natural person, a citizen of another state is the presence of the principal;" a similar decision had been made in *Pomeroy* v. *R. R.* (4 Blatch. 120), 1857; and in *Maine* v. *Bank*, 6 Biss. 26 (1874); but these decisions are certainly not consonant with later authority. See *Wilson Packing Co.* v. *Hunter*, reported in same volume, 8 Biss. 429, 1879.

In *Good Hope Co.* v. *Barb Fencing Co.* (22 Fed. 635, 1884), the question raised was, in the language of the court, "whether jurisdiction is acquired in an action brought against a foreign corporation by the service of process on its president while in this district, although the corporation has no office or place of business within this state, and is not engaged in business here, except that occasionally it has made a purchase of goods by sending its agent here for that purpose. Its president came here to adjust a controversy between it and the plaintiff growing out of such a purchase and was then served with the summons in this action. Stated in another form the question is whether a foreign corporation is "found" here within the meaning of Section 739, Rev. St., for the service of process, when its president is temporarily here upon the business of the corporation. After criticising the doctrine of the highest

court of the same state (*Pope* v. *Mfg. Co.*), and quoting Justice FIELD in *St. Clair* v. *Cox*, the court concludes as follows: "A corporation ought not to be deemed 'found' within the meaning of Section 739, unless it is so far constructively present at the place where its agent is served with process, that a judgment against it would be respected everywhere and be given full force and efficacy in other jurisdictions. Where a corporation is not engaged in business in this state there is no room for implying its consent to come here to litigate with a citizen of this state or a foreign state. In this case the president of the defendant corporation was here in his representative character, but the corporation had never been *practically engaged in business here*. It had made purchases here occasionally, but it could have made them by correspondence as well as by the presence of its agents here. If the purchases had been made by correspondence it could be as logically urged that the corporation was engaged in business here as it can be now. Instead of writing its agent came here in person; as it has never kept an office here or been engaged in any business here which required it to invoke the comity of the laws of the state, it was not 'found' here for the purpose of being sued. The motion to vacate the service of the process is granted" (per WALLACE, J.).

Thus a Federal court of New York refused to follow the ruling of the highest court of the state. In the same court it was held that in a suit against an Illinois corporation for infringement of a trade mark, service upon the agent in the transaction out of which the suit arose, *at its place of business within the district*, was sufficient—*Estes* v. *Belford* (Id. 275). In *U. S.* v. *Am. Bell Telephone Co.* (29 Fed. 17), it was held: "When a foreign corporation carries its corporate business, or some substantial part thereof, in this state by means of an agent or representative appointed to act here, and having the charge and management of such business, it impliedly assents to be found and sued here in the person of such agent;" but it was there held that the case did not come within the operation of the rule. In *Carpenter* v. *Westinghouse Air Brake Co.* (32 Fed. 434), which was a suit for an infringement of a

patent, it appeared that the defendant corporation (of Pa.) had within the state of Iowa a train of cars, to which was attached the brake which it manufactured and sold, which train of cars and brake were exhibited and used simply for the purpose of exhibition; no contracts for the sale of the brake were there made. The question propounded by the court was: "Does the fact that the chief officers of the corporation come into the state with some of its property for advertisement and exhibition, bring that corporation into the state as an inhabitant or so that it can be said to be *found* within the state within the act of Congress?" The court held that it did not, saying: "If we say that the mere matter of advertising a business is the introduction of that business in the state, it would follow that every corporation located elsewhere, that should send its circulars into the state, send newspapers with its advertisement, would be engaged in business in that state, and to be found there for the purposes of suit. The true rule is that the corporation does not come into the state, is not found in any state, unless in some way it establishes an office or agency for the transaction of the business for which it is organized, and when that is done it has no right to say it is not found within the state" (per BREWER, J.).

In *St. Louis Wire Mill Co.* v. *Consolidated Barb Wire Co.*, reported in the same volume, page 802, it appeared that a Kansas corporation had made occasional purchases of raw material in St. Louis by mail and by agents, though it never had a business office or agent located in Missouri; a controversy arose with reference to one of these purchases made by one of its officers, and during a visit by him to the city to attend the St. Louis Fair, he was called upon at his hotel by a representative of the plaintiff with a view to an adjustment of the matter; a discussion of that and other business matters took place at some length, but nothing was accomplished thereby; subsequently he was served with process as being the agent of the defendant. It was held that the service was not sufficient. After a discussion of the anthorities upon the question what constitutes being "engaged in business in the state," Judge THAYER says: "When it is said that a corpora-

tion is engaged in business in a foreign state, and for that reason has voluntarily subjected itself to the operation of the laws of such foreign state regulating the service of processes on foreign corporations, reference is plainly had to business operations of the corporation carried on within the state through the medium of agents appointed for that purpose, *that are continuous, or at least of some duration*, and not to business transactions that are merely casual, such as an occasional purchase of goods or material within a foreign state."

The doctrine of the Good Hope case has been applied in later decisions by the same court; in *Clews* v. *Woodstock Iron Co.*, 44 Fed. 31 (1890), it was applied where service had been made in New York upon the president of an Alabama corporation (Mining Co.), while he was in that city attending to the business of various enterprises, including the negotiation of a mortgage on defendant's property, and having the bonds secured thereby listed on the Stock Exchange; it appeared that the corporation had done no other business in the state. The court considered that such business could have been conducted by correspondence as well. "It kept no office here; it did not continuously or even for a period of some duration, carry on here the business which it was organized to carry on, and by the regular transaction of which it gave evidence of its continued existence. It cannot, therefore, be held under the authorities that the defendant was at the time when Tyler was served, engaged in business in this state so as to make service of the summons on him efficient to bind the corporation:" See, also, *Goldey* v. *Morning News*, 42 Fed. 112; *Hunter* v. *Improvement Co.*, 26 Id. 299: *Bentlif* v. *London & Colonial Finance Corp.*, 44 Id. 667; and *American Wooden Ware Co.* v. *Stem*, 63 Id. 676.

In the last mentioned case the officer was present in charge of one of the company's suits, and it appeared that prior to the service the defendant had bought in at execution sale a stock of goods of its judgment debtor, and sold the same in the regular course of business through a special agent in New York; also that it had received orders there through a travelling salesman, but that it never had an agency or transacted

business in the state except as stated. Motion to vacate service of process was granted.

In the recent case of *U. S. Graphite Co.* v. *Pacific Graphite Co.* (68 Fed. 442, 1895), the Circuit Court of Michigan, in applying the doctrine of the Goldey Case and the Good Hope Case to the facts before the court, said: "James O. Roundtree, the president of the defendant company in this cause, was not the resident agent of the corporation, for it had none such in Michigan; and if it be conceded that, while temporarily here, at the time of the service made upon him, he was engaged in negotiations concerning the business of the company, this is not sufficient to subject the defendant to the jurisdiction of any court in this state by reason of service made upon him."

This decision marks a second departure by a federal court of a state from the ruling of the highest state court upon the question.

These cases, it is thought, will serve to indicate the extent to which some of the federal courts have gone, when called upon to determine what constitutes being "engaged in business in a state," and under what circumstances a foreign corporation can be considered "found" within a state for the purposes of citation.

To return to the decision in the principal case, its soundness still remains unimpaired, when we consider the facts as they actually appeared.

The defendant was a Tennessee corporation engaged in the manufacture and establishment of ice machine plants; that was its regular business, such a business as would naturally expand into various states (not necessarily to the extent of having factories or fixed places of business therein); it accordingly sent its authorized agent into Louisiana for the purpose of effecting a contract there in the line of its business; the contract was there entered into, and there to be performed by it; it went there by its chief officer to supervise the performance of said contract (the erection of the plant); and to enforce its terms by an action at law; while there in such representative capacity and in that capacity alone, the presi-

dent was served with process in the suit in question, which suit related to the contract and business above referred to.

To repeat the language of Justice WATKINS, such would seem to be "a good and effective service on which a valid judgment may be founded, which may be enforced against any property of the defendant company *within the state*."

It may be added that while the writer concedes the soundness of the decision as limited, considering the facts upon which it was based, he must, nevertheless, admit that the doctrine announced in the federal cases above quoted is equally sound and convincing, and should be followed.

G. H. JENKINS.

Philadelphia, September, 1895.